

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th floor
Sacramento, California 95814

INITIAL STATEMENT OF REASONS

July 26, 2002

RH-01013338

REGULATIONS PERTAINING TO CLERICAL ACTIVITIES,
ACTIVITIES INVOLVING CLERICAL CHANGES TO INSURANCE
POLICIES, AND INDIRECT MARKETING AND SERVICING
SUPPORT ACTIVITIES EXEMPT FROM INSURANCE PRODUCER
LICENSURE.

INTRODUCTION

Assembly Bill 393, Chapter 321, Statutes of 2000, amended the regulatory and licensing scheme for insurance agents/brokers. Under California Insurance Code ("CIC") Sections 1631 and 1635, as amended by AB 393, persons cannot solicit, negotiate, or effect contracts of insurance unless licensed by the Commissioner to act in such capacities.

CIC Section 1635 specifies certain exemptions from insurance agent/broker licensure. CIC Section 1635, subdivision (l), added by AB 393, states that licensure as insurance producers is not required for insurer or producer officers, directors or employees whose executive, administrative, managerial or clerical activities are indirectly related to soliciting, negotiating or effecting the sale of insurance. Subdivision (m) of CIC Section 1635, also added by AB 393, states that licensure as insurance producers is not required for employees whose activities are limited to making clerical changes to existing insurance policies or providing indirect marketing and servicing support to determine general interest in insurance products.

New regulation Sections 2193, 2193.1, 2193.2 and 2193.3 implement, interpret, and make specific the provisions of CIC Sections 1631 and 1635(l) and (m).

SPECIFIC PURPOSE AND REASONABLE NECESSITY FOR REGULATIONS:

The specific purpose for these regulations, and the rationale for the Commissioner's determination that these regulations are reasonably necessary to carry out the purposes for which they are proposed is set forth below.

Section 2193: Definitions

Section 2193 sets forth two definitions for Article 10, which will provide the activities exempt from licensure by the Commissioner as insurance producers - agents, brokers or solicitors - under Chapter 5, Part 2, Division 1 of the CIC. "Licensee" is defined to mean those persons licensed by the Commissioner to act as insurance producers under Insurance Code Sections 1621 through 1624. Conversely, "unlicensed person" is defined to mean a person not so licensed.

These definitions are needed to make clear and simplify the language of the new license exemption regulations and to convey to persons subject to, implementing the regulations and reading the regulations, the meaning of the regulations.

Section 2193.1: Clerical Activities Exempt From Insurance Producer Licensing

CIC Section 1635(1) states that insurance producer licensure is not required for insurer or producer officers, directors or employees whose executive, administrative, managerial or clerical activities are indirectly related to soliciting, negotiating or effecting the sale of insurance. New Section 2193.1 provides those clerical activities indirectly related to the solicitation, negotiation or effecting sale of insurance exempt from licensure.

Under Section 2193.1 clerical activities exempt from licensure include, but are not limited to: distribution of brochures, business cards, or other general information advertising insurers, insurance agencies, or insurance products, services or promotions; preparing insurance coverage applications; obtaining information from persons other than the insureds or applicants for coverage; and, preparation of insurance related documentation under the supervision of producer licensees and for the review and signature of licensees.

This regulation is needed to specify clerical activities that can be performed by insurer or producer personnel without the necessity for licensure, as provided in CIC Sections 1631 and 1635. The activities provided in the regulation are clerical or ministerial in nature, and do not include analysis, giving advice or making recommendations as to insurance contracts or terms of contracts. These activities, due to their clerical or ministerial nature, are not considered to be soliciting, negotiating or effecting the sale of insurance, and, therefore should be exempt from licensure. This regulation is also needed to comply with the direction in Section 8 of AB 393 that the Commissioner adopt regulations to implement CIC Section 1635.

Section 2193.2: Activities Involving Clerical Changes to Insurance Policies and Indirect Marketing and Servicing Support Exempt From Insurance Producer Licensing

CIC Section 1635(m) states that insurance producer licensure is not required for employees whose activities are limited to making clerical changes to existing insurance policies or providing indirect marketing and servicing support to determine general interest in insurance products.

Under Section 2193.2 the activities exempt from insurance producer licensure involving making changes to existing insurance policies or providing indirect insurance marketing and servicing support include but are not limited to: dissemination of insurance buyers' guides, coverage applications, and other forms in response to consumer requests; receiving or recording information from customers; scheduling appointments with producer licensees; communicating with customers to obtain factual information requested by producer licensees; accepting insurance premiums to deliver to producer licensees; receiving and recording insureds' requests for additions or deletions to existing policies and preparing endorsement forms for the signatures of producer licensees; informing insureds, in response to their inquiries, as to existing policy information, including financial limits, premium balances due, and effective coverages; answering the telephone, receiving faxes and other general secretarial or administrative functions; and, foreign language translation between producer licensees and customers.

This regulation is needed to specify activities limited to making clerical changes to existing insurance policies or providing indirect marketing and servicing support to determine general interest in insurance products that can be performed by insurer or producer personnel without the necessity for licensure, as provided in CIC Sections 1631 and 1635. The activities provided in the regulation are clerical or ministerial in nature, and do not include analysis, giving advice or making recommendations as to insurance contracts or terms of contracts. These activities, due to their clerical or ministerial nature, are not considered to be soliciting, negotiating or effecting the sale of insurance, and, therefore should be exempt from licensure.

This regulation is also needed to comply with the direction in Section 8 of AB 393 that the Commissioner adopt regulations to implement CIC Section 1635.

Section 2193.3: Activities Requiring Licensure as an Insurance Producer

CIC Section 1631 provides that persons cannot solicit, negotiate or effect insurance contracts, or act in the capacities of insurance

agents, life agents, insurance brokers or insurance solicitors, unless licensed by the Commissioner to act in such capacities.

New Section 2193.3 implements CIC Sections 1631 and 1635 by stating those activities which are not exempt from licensure because they are directly related to the solicitation, negotiation or effecting the sale of insurance.

The activities for which insurance producer licenses required are: explaining or interpreting, and offering of opinions or recommendations on, insurance coverages, exposures, limits, premiums, rates, deductibles, payment plans, or other insurance contract terms; recommending, advising or urging customers to purchase particular insurance policies or to insure with particular companies or insurers; and, binding insurance coverages.

This regulation is needed to specify activities requiring licensure as an insurance producer, as provided in CIC Sections 1631 and 1635. The activities provided in the regulation include analysis, interpreting, describing, giving advice or making recommendations as to insurance contracts or terms of contracts. These activities are directly related to the soliciting, negotiating or effecting the sale of insurance. This regulation is also needed to comply with the direction in Section 8 of AB 393 that the Commissioner adopt regulations to implement CIC Section 1635.

IDENTIFICATION OF STUDIES

There are no specific studies relied upon in the adoption of Article 10, Sections 2193 through 2193.3.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations would not mandate the use of specific technologies or equipment.

REASONABLE ALTERNATIVES TO THE REGULATIONS

No alternatives were considered by the Commissioner. AB 393, Section 8, requires the adoption of regulations to implement it.

ECONOMIC IMPACT ON BUSINESS

The Commissioner has made an initial determination that the regulations may not have a significant adverse economic impact on

business. AB 393, Section 8 requires the adoption of regulations pertaining to exemptions from insurance agent/broker licensure, and any economic impact, therefore, stems from the enactment of that measure. The Commissioner believes that in clarifying the exemptions and implementing AB 393 there may be additional costs to some entities due to their employees becoming licensed as insurance producers, but also that some other entities may realize cost savings because fewer of their employees may need to be licensed.

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